



Australian Capital Territory

# Sexuality and Gender Identity Conversion Practices Act 2020

A2020-49

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Australian Capital Territory

# Sexuality and Gender Identity Conversion Practices Act 2020

**A2020-49**

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An Act about conversion practices relating to sexuality and gender identity, and  
for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Sexuality and Gender Identity Conversion Practices Act 2020*.

### 2 Commencement

This Act commences 6 months after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*gender identity*—see the [Discrimination Act 1991](#), dictionary.’ means that the term ‘gender identity’ is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 Objects of Act

The objects of this Act are—

- (a) to affirm that—
  - (i) all people have characteristics of sexuality and gender identity; and
  - (ii) no combination of those characteristics constitutes a disorder, disease, illness, deficiency, disability or shortcoming; and
- (b) to recognise and prevent the harm caused by sexuality and gender identity conversion practices.

*Note* A person may make a complaint to the human rights commission about sexuality and gender identity conversion practices (see [Human Rights Commission Act 2005](#), s 43 and div 4.2D).



- support for a person exploring and expressing their sexuality

*Note* Under the *Human Rights Act 2004*, s 14, a person has the right to freedom of thought, conscience and religion, including the freedom to demonstrate their religion or belief in worship, observance, practice and teaching, either individually or as part of a community and whether in public or private. It is not intended that a mere expression of a religious tenet or belief would constitute a sexuality or gender identity conversion practice.

- (3) Also, *sexuality or gender identity conversion practice* does not include a practice by a health service provider that, in the provider's reasonable professional judgment, is necessary to—
- (a) provide a health service in a manner that is safe and appropriate; or
  - (b) comply with the provider's legal or professional obligations.
- (4) In this section:

*health service*—see the *Health Act 1993*, section 5.

*health service provider*—see the *Health Act 1993*, section 7.

## 8 **Offence—performing conversion practice on protected person**

- (1) A person commits an offence if—
- (a) the person performs a sexuality or gender identity conversion practice on another person (the *recipient*); and
  - (b) the recipient is a protected person.

Maximum penalty: 150 penalty units, imprisonment for 12 months or both.

- (2) A person commits an offence against subsection (1) whether or not the recipient, or a parent or guardian of the recipient, consented to the practice.

**9 Offence—removing protected person from ACT for conversion practice**

A person commits an offence if—

- (a) the person removes another person (the *recipient*) from the ACT; and
- (b) the recipient is a protected person; and
- (c) the removal is for the purpose of a sexuality or gender identity conversion practice being performed on the recipient.

Maximum penalty: 150 penalty units, imprisonment for 12 months or both.



## Part 3                      Review of Act

### 10                      Review of Act

- (1) The Minister must review the operation of this Act, and the amendments of other territory laws made by this Act, and present a report of the review to the Legislative Assembly as soon as practicable after the end of its 2nd year of operation.

*Note*                      A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) This part expires 3 years after the day it commences.

## Part 4 Consequential amendments

### 11 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

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## Schedule 1      Human Rights Commission Act 2005—Consequential amendments

(see s 11)

### **[1.1]      New section 21 (1) (c) (vi)**

*insert*

(vi) a conversion practice complaint;

### **[1.2]      New section 42 (1) (ec)**

*insert*

(ec) a conversion practice complaint;

### **[1.3]      Commission's obligation to be prompt and efficient New section 45 (2) (eb)**

*insert*

(eb) if the complaint is a conversion practice complaint and the commission decides not to refer the complaint for conciliation—tell the complainant, in writing, that the complaint will not be referred for conciliation and include a conversion practice referral statement with the notice; and

**[1.4] New division 4.2D***insert***Division 4.2D Conversion practice complaints to ACAT****53Z Meaning of *person complained about*—div 4.2D**

In this division:

*person complained about* means the provider of a sexuality or gender identity conversion practice.

**53ZA Conversion practice complaints—referral**

- (1) This section applies if—
  - (a) either—
    - (i) a complainant is given a conversion practice referral statement under section 45 (2) (eb); or
    - (ii) a statement under section 82C (1) is included in a final report in relation to a complaint; and
  - (b) within 60 days after the day the statement is given, the complainant requires the commission to refer the complaint to the ACAT.
- (2) The commission must—
  - (a) refer the complaint to the ACAT; and
  - (b) tell the complainant and the person complained about, in writing, about the referral.

*Note* The commission must also close the complaint (see s 78 (2) (d)).

**53ZB Conversion practice complaints—late application in exceptional circumstances**

- (1) This section applies if—
  - (a) a complainant has been given a statement under section 45 (2) (eb) or section 82C (1); and
  - (b) the complainant has not required the commission to refer the complaint to the ACAT within 60 days after the day the statement is given to the complainant.
- (2) The complainant may apply to the ACAT for the complaint to be heard by the ACAT.
- (3) The ACAT may grant the application only if satisfied on reasonable grounds that exceptional circumstances prevented the complainant from requiring the complaint to be referred to the ACAT within the 60-day period.
- (4) If the ACAT grants the application, the complaint is, for this Act, taken to have been referred to the ACAT.

**53ZC Conversion practice complaints—parties to ACAT proceeding**

The following are parties to a complaint referred to the ACAT under this division:

- (a) the complainant;
- (b) the person complained about;
- (c) if, on application by the commission, the ACAT joins the commission as a party to the complaint—the commission.

**53ZD Conversion practice complaints—commission to give information etc to ACAT**

The commission must give the ACAT (if asked by it) any information or copies of documents in relation to a complaint referred to the ACAT under this division, other than—

- (a) a communication or document to which section 66 (Admissibility of evidence) applies; or
- (b) information, a document or something else relevant to a consideration in relation to a complaint given to the commission under section 73 (Power to ask for information, documents and other things); or
- (c) information given to the commission under section 74 (Requiring attendance etc).

**53ZE Conversion practice complaints—ACAT orders**

- (1) This section applies if—
  - (a) the commission refers a complaint to the ACAT under this division; and
  - (b) the ACAT is satisfied that the person complained about engaged in a harmful practice.
- (2) The ACAT may make 1 or more of the following orders:
  - (a) that the person complained about not repeat or continue the harmful practice;
  - (b) that the person complained about perform a stated reasonable act to redress any loss or damage suffered by a person because of the harmful practice;

- 
- (c) unless the complaint has been dealt with as a representative complaint—that the person complained about pay to a person a stated amount by way of compensation for any loss or damage suffered by the person because of the harmful practice;
- (d) any other order the ACAT considers appropriate.
- (3) In making an order under subsection (2) (c), the ACAT—
- (a) must consider—
- (i) the inherent dignity of all people and the impact of the sexuality or gender identity conversion practice on the person’s dignity; and
- (ii) the nature of the sexuality or gender identity conversion practice; and
- (iii) any mitigating factors; and
- (b) may consider any other matter the ACAT considers relevant.

**Examples—par (a) (i)—impact of sexuality or gender identity conversion practice**

distress, humiliation, loss of self-esteem, loss of enjoyment of life

**Example—par (a) (iii)**

a public apology

- (4) In this section:

***harmful practice*** means a sexuality or gender identity conversion practice that caused, or is likely to cause, harm to a person or otherwise has adversely affected, or is likely to adversely affect, a person’s rights, interests or welfare.

***representative complaint*** means a complaint that is dealt with by the commission as a representative complaint under section 71.

**53ZF Conversion practice complaints—no monetary limit on jurisdiction of ACAT**

The ACAT is not, in exercising the jurisdiction conferred on it by this division, limited in the amount of money that it may order to be paid.

**[1.5] Section 62 (3) (b)**

*omit*

or retirement village complaint

*substitute*

, retirement village complaint or a conversion practice complaint

**[1.6] Section 78 (2) (d)**

*omit*

or retirement village complaint

*substitute*

, retirement village complaint or a conversion practice complaint

**[1.7] New section 82C**

*insert*

**82C Closing conversion practice complaints**

- (1) The final report in relation to a conversion practice complaint must include a conversion practice referral statement.

*Note* **Conversion practice referral statement**—see s 88C.

- (2) However, subsection (1) does not apply if—
  - (a) the parties to the complaint have made a conciliation agreement in relation to the complaint; or
  - (b) the complainant has withdrawn the complaint.



- (3) This section is additional to the other requirements of this Act for a final report.

**[1.8] New section 88C**

*in part 4, insert*

**88C Conversion practice referral statements**

A *conversion practice referral statement* is a statement in a notice in relation to a conversion practice complaint to the effect that—

- (a) the commission has closed the complaint; and
- (b) the complainant may ask the commission to refer the complaint to the ACAT within 60 days after the day the notice is given to the complainant; and
- (c) after the 60-day period, the complainant may apply to the ACAT under section 53ZB (Conversion practice complaints—late application in exceptional circumstances) for the complaint to be heard.

*Note* The commission must refer the complaint to the ACAT if the complainant asks it to refer the complaint within the 60-day period (see s 53ZA).

**[1.9] Dictionary, new definitions**

*insert*

*conversion practice complaint* means a complaint about a sexuality or gender identity conversion practice that may be made, or is made, under section 43.

*conversion practice referral statement*—see section 88C.

**[1.10] Dictionary, definition of *person complained about*, new paragraph (c)**

*insert*

- (c) for division 4.2D (Conversion practice complaints to ACAT)—see section 53Z.

**[1.11] New definition of *sexuality or gender identity conversion practice***

*insert*

*sexuality or gender identity conversion practice*—see the *Sexuality and Gender Identity Conversion Practices Act 2020*, section 7.

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## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACT
- penalty unit (see s 133)
- person (see s 160).

*gender identity*—see the [Discrimination Act 1991](#), dictionary.

*impaired decision-making ability*—see the [Guardianship and Management of Property Act 1991](#), section 5.

*protected person* means—

- (a) a child; or
- (b) a person who has impaired decision-making ability in relation to a matter relating to the person's health or welfare.

*sexuality*—see the [Discrimination Act 1991](#), dictionary.

*sexuality or gender identity conversion practice*—see section 7.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 13 August 2020.

**2 Notification**

Notified under the [Legislation Act](#) on 4 September 2020.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Sexuality and Gender Identity Conversion Practices Bill 2020, which was passed by the Legislative Assembly on 27 August 2020.

Clerk of the Legislative Assembly

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